

UNEMPLOYMENT INSURANCE MODIFICATIONS

2012 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill modifies the Employment Security Act by reducing the maximum unemployment insurance contribution rate for an employer beginning in calendar year 2012 and capping the social unemployment insurance contribution rate for all employers for calendar year 2012 only.

Highlighted Provisions:

This bill:

- ▶ reduces the maximum unemployment insurance contribution rate for an employer from 9% plus the social contribution rate to 7% plus the social contribution rate beginning in calendar year 2012;
- ▶ caps the social unemployment insurance contribution rate for all employers at .4% for calendar year 2012 only;
- ▶ provides that if the reserve fund is insolvent, the reserve factor is 2.0 until the reserve fund becomes solvent;
- ▶ allows the Unemployment Insurance Division to accept an offer of compromise

29 from an employer or claimant to reduce past due debt under certain circumstances;

30       ▶ requires the Unemployment Insurance Division to make rules allowing for an offer  
31 of compromise; and

32       ▶ makes technical changes.

33 **Money Appropriated in this Bill:**

34       None

35 **Other Special Clauses:**

36       This bill provides an immediate effective date.

37 **Utah Code Sections Affected:**

38 AMENDS:

39       **35A-4-303**, as last amended by Laws of Utah 2011, Chapters 297 and 342

40       **35A-4-304**, as last amended by Laws of Utah 2011, Chapter 297

41       **35A-4-305**, as last amended by Laws of Utah 2011, Chapter 297



43 *Be it enacted by the Legislature of the state of Utah:*

44       Section 1. Section **35A-4-303** is amended to read:

45       **35A-4-303. Determination of contribution rates.**

46       (1) (a) An employer's basic contribution rate is the same as the employer's benefit  
47 ratio[;] and is determined by dividing the total benefit costs charged back to an employer  
48 during the immediately preceding four fiscal years by the total taxable wages of the employer  
49 for the same time period, calculated to four decimal places, disregarding [~~the~~] any remaining  
50 fraction[; ~~if any~~].

51       (b) In calculating the basic contribution rate under Subsection (1)(a)[; ~~(i)~~], if four fiscal  
52 years of data are not available[;]:

53       (i) the data of [~~three~~] the number of complete fiscal years that is available shall be  
54 divided by the total taxable wages for the same time period[;]; or

55       [~~(ii) if three fiscal years of data are not available, the data of two fiscal years shall be~~  
56 ~~divided by the total taxable wages for the same time period; or]~~

57 ~~[(iii) if two fiscal years of data are not available, the data of one fiscal year shall be~~  
 58 ~~divided by the total taxable wages for the same time period.]~~

59 ~~[(2) (a) In calculating the social contribution rate under Subsection (2)(b) or (c):]~~

60 ~~[(i) if four fiscal years of data are not available, the data of three fiscal years shall be~~  
 61 ~~divided by the total taxable wages for the same time period; or]~~

62 ~~[(ii) if three fiscal years of data are not available, the data of two fiscal years shall be~~  
 63 ~~divided by the total taxable wages for the same time period.]~~

64 ~~[(b) Beginning January 1, 2005, the division shall calculate the social contribution rate~~  
 65 ~~by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding~~  
 66 ~~four fiscal years by the total taxable wages of all employers subject to contributions for the~~  
 67 ~~same period, calculated to four decimal places, disregarding any remaining fraction.]~~

68 ~~[(c) Beginning January 1, 2009]~~

69 ~~[(i) if the employer is a new employer, the basic contribution rate shall be determined~~  
 70 ~~as described in Subsection (5).~~

71 ~~(2) (a) Subject to Subsection (2)(b), the division shall [calculate] determine the social~~  
 72 ~~contribution rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable~~  
 73 ~~to the preceding four fiscal years by the total taxable wages of all employers subject to~~  
 74 ~~contributions for the same period, calculated to four decimal places, disregarding any~~  
 75 ~~remaining fraction, and [rounded] rounding the result to three decimal places[~~, disregarding any~~~~  
 76 ~~further fraction;] as follows:~~

77 ~~(i) if the fourth decimal place is [~~.0004~~] four or less, [~~or rounding up to the next higher~~~~  
 78 ~~number;] the third decimal place does not change; or~~

79 ~~(ii) if the fourth decimal place is [~~.0005~~] five or more, rounding the third decimal place~~  
 80 ~~up.~~

81 ~~(b) For calendar year 2012 only, if the calculation of the social contribution rate under~~  
 82 ~~Subsection (2)(a) is greater than .004, the social contribution rate for calendar year 2012 is~~  
 83 ~~.004.~~

84 ~~(3) (a) [~~Beginning January 1, 2000, the] The division shall [~~by administrative decision]~~~~~~

85 set the reserve factor at a rate that [~~shall sustain~~] sustains an adequate reserve.

86 (b) For the purpose of setting the reserve factor:

87 [(i) (A) ~~the adequate reserve is defined as between 17 and 19 months of benefits at the~~  
88 ~~average of the five highest benefit cost rates in the last 25 years;~~]

89 [~~(B) beginning January 1, 2009,~~] (i) the adequate reserve is defined as between 18 and  
90 24 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

91 (ii) the division shall set the reserve factor [~~shall be~~] at 1.0000 if the actual reserve fund  
92 balance as of June 30 preceding the computation date is determined to be an adequate reserve;

93 (iii) the division shall set the reserve factor [~~will be set~~] between 0.5000 and 1.0000 if  
94 the actual reserve fund balance as of June 30 preceding the computation date is greater than the  
95 adequate reserve;

96 (iv) the division shall set the reserve factor [~~will be set~~] between 1.0000 and 1.5000 if  
97 the actual reserve fund balance as of June 30 prior to the computation date is less than the  
98 adequate reserve;

99 (v) if the actual reserve fund balance as of June 30 preceding the computation date is  
100 insolvent or negative or if there is an outstanding loan from the Federal Unemployment  
101 Account[;] or other lending institution, the division shall set the reserve factor [~~will be set~~] at  
102 2.0000 until the actual reserve fund balance as of June 30 preceding the computation date is  
103 determined [~~to be an adequate reserve~~] by the division to be solvent or positive and there is no  
104 outstanding loan;

105 (vi) the division shall set the reserve factor [~~will be set~~] on or before January 1 of each  
106 year; and

107 (vii) money made available to the state under Section 903 of the Social Security Act,  
108 42 U.S.C. 1103, as amended, which is received on or after January 1, 2004, may not be  
109 considered in establishing the reserve factor under this section for the rate year 2005 or any  
110 [~~subsequent~~] following rate year.

111 [(4) (a) ~~On or after January 1, 2004, an employer's overall contribution rate is the~~  
112 ~~employer's basic contribution rate multiplied by the reserve factor established according to~~

113 ~~Subsection (3), calculated to four decimal places, disregarding the remaining fraction, plus the~~  
114 ~~social contribution rate established according to Subsection (2), and calculated to three~~  
115 ~~decimal places, disregarding the remaining fraction, but not more than a maximum overall~~  
116 ~~contribution rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for~~  
117 ~~new employers.]~~

118 ~~[(b)]~~ (4) (a) Beginning January 1, 2009, an employer's overall contribution rate is:

119 (i) except as provided in Subsection (4)(a)(ii) or (iii), the employer's basic contribution  
120 rate multiplied by the reserve factor established [according to] under Subsection (3)(b),  
121 calculated to four decimal places, disregarding [the] any remaining fraction, plus the social  
122 contribution rate established [according to] under Subsection (2), and the result calculated to  
123 three decimal places, disregarding [the] any remaining fraction[; but not more than a maximum  
124 overall contribution rate of 9%, plus the applicable social contribution rate and not less than  
125 1.1% for new employers.];

126 (ii) if under Subsection (4)(a)(i), the overall contribution rate calculation for an  
127 employer is greater than 9% plus the applicable social contribution rate, the overall  
128 contribution rate for the employer shall be reduced to 9% plus the applicable social  
129 contribution rate; or

130 (iii) if under Subsection (4)(a)(i), the overall contribution rate calculation for a new  
131 employer is less than 1.1%, the overall contribution rate for the new employer shall be  
132 increased to 1.1%.

133 (b) Beginning January 1, 2012, an employer's overall contribution rate is:

134 (i) except as provided in Subsection (4)(b)(ii) or (iii), the employer's basic contribution  
135 rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four  
136 decimal places, disregarding any remaining fraction, plus the social contribution rate  
137 established under Subsection (2), and the result calculated to three decimal places, disregarding  
138 any remaining fraction;

139 (ii) if under Subsection (4)(b)(i), the overall contribution rate calculation for an  
140 employer is greater than 7% plus the applicable social contribution rate, the overall

141 contribution rate for the employer shall be reduced to 7% plus the applicable social  
 142 contribution rate; or

143 (iii) if under Subsection (4)(b)(i), the overall contribution rate calculation for a new  
 144 employer is less than 1.1%, the overall contribution rate for the new employer shall be  
 145 increased to 1.1%.

146 (c) The overall contribution rate described under this Subsection (4) does not include  
 147 the addition of any penalty applicable to an employer;

148 (i) as a result of delinquency in the payment of contributions as provided in Subsection  
 149 (9)~~[-]; or~~

150 ~~[(d) The overall contribution rate does not include the addition of any penalty~~  
 151 ~~applicable to an employer]~~

152 (ii) that is assessed a penalty rate under Subsection 35A-4-304(5)(a).

153 (5) (a) Except as otherwise provided in ~~[Subsection (9), each new employer shall pay a~~  
 154 ~~contribution rate]~~ this section, the basic contribution rate for a new employer is based on the  
 155 average benefit cost rate experienced by employers of the major industry, as defined by  
 156 department rule, to which the new employer belongs~~[-, the basic contribution rate to be~~  
 157 ~~determined as follows:]~~.

158 ~~[(a)]~~ (b) Except as provided in Subsection (5)~~[(b)]~~(c), by January 1 of each year, the  
 159 basic contribution rate to be used in computing ~~[the]~~ a new employer's overall contribution rate  
 160 under Subsection (4) is the benefit cost rate ~~[which]~~ that is the greater of:

161 (i) the amount calculated by dividing the total benefit costs charged back to both active  
 162 and inactive employers of the same major industry for the last two fiscal years by the total  
 163 taxable wages paid by those employers that were paid during the same time period, computed  
 164 to four decimal places, disregarding ~~[the]~~ any remaining fraction~~[-, if any]; or~~

165 (ii) 1%.

166 ~~[(b)]~~ (c) If the major industrial classification assigned to a new employer is an industry  
 167 for which a benefit cost rate does not exist because the industry has not operated in the state or  
 168 has not been covered under this chapter, the employer's basic contribution rate ~~[shall be]~~ is

169 5.4%. This basic contribution rate is used in computing the employer's overall contribution  
170 rate under Subsection (4).

171 (6) Notwithstanding any other provision of this chapter, and except as provided in  
172 Subsection (7), if an employing unit that moves into this state is declared to be a qualified  
173 employer because it has sufficient payroll and benefit cost experience under another state, a  
174 rate shall be computed on the same basis as a rate is computed for all other employers subject  
175 to this chapter if that unit furnishes adequate records on which to compute the rate.

176 (7) An employer who begins to operate in this state after having operated in another  
177 state shall be assigned the maximum overall contribution rate until the employer acquires  
178 sufficient experience in this state to be considered a "qualified employer" if the employer is:

179 (a) regularly engaged as a contractor in the construction, improvement, or repair of  
180 buildings, roads, or other structures on lands;

181 (b) generally regarded as being a construction contractor or a subcontractor specialized  
182 in some aspect of construction; or

183 (c) required to have a contractor's license or similar qualification under Title 58,  
184 Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

185 (8) (a) If an employer acquires the business or all or substantially all the assets of  
186 another employer and the other employer had discontinued operations upon the acquisition or  
187 transfers its trade or business, or a portion of its trade or business, under Subsection  
188 35A-4-304(3)(a):

189 (i) for purposes of determining and establishing the acquiring party's qualifications for  
190 an experience rating classification, the payrolls of both employers during the qualifying period  
191 shall be jointly considered in determining the period of liability with respect to:

192 (A) the filing of contribution reports;

193 (B) the payment of contributions; and

194 (C) [~~after January 1, 1985,~~] the benefit costs of both employers;

195 (ii) the transferring employer shall be divested of the transferring employer's  
196 unemployment experience provided the transferring employer had discontinued operations, but

197 only to the extent as defined under Subsection 35A-4-304(3)(c); and

198 (iii) if an employer transfers its trade or business, or a portion of its trade or business,  
199 as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its  
200 employer's unemployment experience.

201 (b) An employing unit or prospective employing unit that acquires the unemployment  
202 experience of an employer shall, for all purposes of this chapter, be an employer as of the date  
203 of acquisition.

204 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in  
205 Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of  
206 the employer's business to another and by ceasing operations as of the date of the transfer, the  
207 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of  
208 transfer.

209 (9) (a) ~~[A rate of less than 8% shall be effective January 1 of any contribution year on~~  
210 ~~or after January 1, 1985, but before January 1, 1988, and a] A rate of less than the maximum~~  
211 ~~overall contribution rate [on or after January 1, 1988;] is effective only [with respect to] for~~  
212 ~~new employers and to those qualified employers who, except for amounts due under division~~  
213 ~~determinations that have not become final, paid all contributions prescribed by the division~~  
214 ~~[with respect to] for the four consecutive calendar quarters in the fiscal year immediately~~  
215 ~~preceding the computation date [on or after January 1, 1985].~~

216 (b) Notwithstanding Subsections (1), (5), (6), and (8), ~~[on or after January 1, 1988,]~~ an  
217 employer who fails to pay all contributions prescribed by the division ~~[with respect to] for~~ the  
218 four consecutive calendar quarters in the fiscal year immediately preceding the computation  
219 date, except for amounts due under determinations that have not become final, shall pay a  
220 contribution rate equal to the overall contribution rate determined under the experience rating  
221 provisions of this chapter, plus a surcharge of 1% of wages.

222 (c) An employer who pays all required contributions shall, for the current contribution  
223 year, be assigned a rate based upon the employer's own experience as provided under the  
224 experience rating provisions of this chapter effective the first day of the calendar quarter in



225 which the payment was made.

226 (d) Delinquency in filing contribution reports may not be the basis for denial of a rate  
227 less than the maximum contribution rate.

228 (10) If an employer makes a contribution payment based on the overall contribution  
229 rate in effect at the time the payment was made and a provision of this section retroactively  
230 reduces the overall contribution rate for that payment, the division:

231 (a) may not directly refund the difference between what the employer paid and what  
232 the employer would have paid under the new rate; and

233 (b) shall allow the employer to make an adjustment to a future contribution payment to  
234 offset the difference between what the employer paid and what the employer would have paid  
235 under the new rate.

236 Section 2. Section **35A-4-304** is amended to read:

237 **35A-4-304. Special provisions regarding transfers of unemployment experience**  
238 **and assignment rates.**

239 (1) As used in this section:

240 (a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance  
241 or reckless disregard for the prohibition involved.

242 (b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal  
243 Revenue Code of 1986.

244 (c) "Trade or business" includes the employer's workforce.

245 (d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or  
246 willful nondisclosure.

247 (2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall  
248 apply regarding assignment of rates and transfers of unemployment experience.

249 (3) (a) If an employer transfers its trade or business, or a portion of its trade or  
250 business, to another employer and, at the time of the transfer, there is common ownership,  
251 management, or control of the employers, then the unemployment experience attributable to  
252 each employer shall be combined into a common experience rate calculation.

253 (b) The contribution rates of the employers shall be recalculated and made effective  
254 upon the date of the transfer of trade or business as determined by division rule in accordance  
255 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

256 (c) (i) If one or more of the employers is a qualified employer at the time of the  
257 transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of  
258 this section shall be assigned an overall contribution rate under Subsection 35A-4-303(4)~~(4)~~,  
259 using combined unemployment experience rating factors, for the rate year during which the  
260 transfer occurred and for the subsequent three rate years.

261 (ii) If none of the employing units is a qualified employer at the time of the transfer,  
262 then all employing units that are party to the transfer described in Subsection (3)(a) shall be  
263 assigned the highest overall contribution rate applicable at the time of the transfer to any  
264 employer who is party to the acquisition for the rate year during which the transfer occurred  
265 and for subsequent rate years until the time when one or more of the employing units is a  
266 qualified employer.

267 (iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified  
268 employer, all the employing units shall be assigned an overall rate under Subsection  
269 35A-4-303(4)~~(4)~~, using combined unemployment experience rating factors for subsequent  
270 rate years, not to exceed three years following the year of the transfer.

271 (d) The transfer of some or all of an employer's workforce to another employer shall be  
272 considered a transfer of its trade or business when, as the result of the transfer, the transferring  
273 employer no longer performs trade or business with respect to the transferred workforce, and  
274 the trade or business is now performed by the employer to whom the workforce is transferred.

275 (4) (a) Whenever a person is not an employer under this chapter at the time it acquires  
276 the trade or business of an employer, the unemployment experience of the acquired business  
277 may not be transferred to that person if the division finds that the person acquired the business  
278 solely or primarily for the purpose of obtaining a lower rate of contributions.

279 (b) The person shall be assigned the applicable new employer rate under Subsection  
280 35A-4-303(5).

281 (c) In determining whether the business was acquired solely or primarily for the  
282 purpose of obtaining a lower rate of contributions, the division shall use objective factors  
283 which may include:

- 284 (i) the cost of acquiring the business;
- 285 (ii) whether the person continued the business enterprise of the acquired business;
- 286 (iii) how long the business enterprise was continued; or
- 287 (iv) whether a substantial number of new employees were hired for performance of  
288 duties unrelated to the business activity conducted prior to acquisition.

289 (5) (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any  
290 other provision of this chapter related to determining the assignment of a contribution rate, or if  
291 a person knowingly advises another person in a way that results in a violation of any of those  
292 subsections or provisions, the person is subject to the following penalties:

293 (i) (A) If the person is an employer, then the employer shall be assigned an overall  
294 contribution rate of 5.4% for the rate year during which the violation or attempted violation  
295 occurred and for the subsequent rate year.

296 (B) If the person's business is already at 5.4% for any year, or if the amount of increase  
297 in the person's rate would be less than 2% for that year, then a penalty surcharge of  
298 contributions of 2% of taxable wages shall be imposed for the rate year during which the  
299 violation or attempted violation occurred and for the subsequent rate year.

300 (ii) (A) If the person is not an employer, the person shall be subject to a civil penalty of  
301 not more than \$5,000.

302 (B) The fine shall be deposited in the penalty and interest account established under  
303 Section 35A-4-506.

304 (b) (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this  
305 section may be prosecuted as unemployment insurance fraud.

306 (ii) The determination of the degree of an offense shall be measured by the total value  
307 of all contributions avoided or reduced or contributions sought to be avoided or reduced by the  
308 unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).

309 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
310 division shall make rules to identify the transfer or acquisition of a business for purposes of this  
311 section.

312 (7) This section shall be interpreted and applied in a manner that meets the minimum  
313 requirements contained in any guidance or regulations issued by the United States Department  
314 of Labor.

315 Section 3. Section **35A-4-305** is amended to read:

316 **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest --**  
317 **Offer to compromise.**

318 (1) (a) Contributions unpaid on the date on which they are due and payable, as  
319 prescribed by the division, shall bear interest at the rate of 1% per month from and after that  
320 date until payment plus accrued interest is received by the division.

321 (b) (i) Contribution reports not made and filed by the date on which they are due as  
322 prescribed by the division are subject to a penalty to be assessed and collected in the same  
323 manner as contributions due under this section equal to 5% of the contribution due if the failure  
324 to file on time was not more than 15 days, with an additional 5% for each additional 15 days or  
325 fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and  
326 not less than \$25 with respect to each reporting period.

327 (ii) If a report is filed after the required time and it is shown to the satisfaction of the  
328 division or its authorized representative that the failure to file was due to a reasonable cause  
329 and not to willful neglect, no addition shall be made to the contribution.

330 (c) (i) If contributions are unpaid after 10 days from the date of the mailing or personal  
331 delivery by the division or its authorized representative, of a written demand for payment, there  
332 shall attach to the contribution, to be assessed and collected in the same manner as  
333 contributions due under this section, a penalty equal to 5% of the contribution due.

334 (ii) A penalty may not attach if within 10 days after the mailing or personal delivery,  
335 arrangements for payment have been made with the division, or its authorized representative,  
336 and payment is made in accordance with those arrangements.

337 (d) The division shall assess as a penalty a service charge, in addition to any other  
338 penalties that may apply, in an amount not to exceed the service charge imposed by Section  
339 7-15-1 for dishonored instruments if:

340 (i) any amount due the division for contributions, interest, other penalties or benefit  
341 overpayments is paid by check, draft, order, or other instrument; and

342 (ii) the instrument is dishonored or not paid by the institution against which it is drawn.

343 (e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit  
344 overpayments, contributions, interest, penalties, and assessed costs, uncollected three years  
345 after they become due, may be charged as uncollectible and removed from the records of the  
346 division if:

347 (i) no assets belonging to the liable person and subject to attachment can be found; and

348 (ii) in the opinion of the division there is no likelihood of collection at a future date.

349 (f) Interest and penalties collected in accordance with this section shall be paid into the  
350 Special Administrative Expense Account created by Section 35A-4-506.

351 (g) Action required for the collection of sums due under this chapter is subject to the  
352 applicable limitations of actions under Title 78B, Chapter 2, Statutes of Limitations.

353 (2) (a) If an employer fails to file a report when prescribed by the division for the  
354 purpose of determining the amount of the employer's contribution due under this chapter, or if  
355 the report when filed is incorrect or insufficient or is not satisfactory to the division, the  
356 division may determine the amount of wages paid for employment during the period or periods  
357 with respect to which the reports were or should have been made and the amount of  
358 contribution due from the employer on the basis of any information it may be able to obtain.

359 (b) The division shall give written notice of the determination to the employer.

360 (c) The determination is considered correct unless:

361 (i) the employer, within 10 days after mailing or personal delivery of notice of the  
362 determination, applies to the division for a review of the determination as provided in Section  
363 35A-4-508; or

364 (ii) unless the division or its authorized representative of its own motion reviews the

365 determination.

366 (d) The amount of contribution determined under Subsection (2)(a) is subject to  
367 penalties and interest as provided in Subsection (1).

368 (3) (a) If, after due notice, an employer defaults in the payment of contributions,  
369 interest, or penalties on the contributions, or a claimant defaults in a repayment of benefit  
370 overpayments and penalties on the overpayments, the amount due shall be collectible by civil  
371 action in the name of the division, and the employer adjudged in default shall pay the costs of  
372 the action.

373 (b) Civil actions brought under this section to collect contributions, interest, or  
374 penalties from an employer, or benefit overpayments and penalties from a claimant shall be:

375 (i) heard by the court at the earliest possible date; and

376 (ii) entitled to preference upon the calendar of the court over all other civil actions  
377 except:

378 (A) petitions for judicial review under this chapter; and

379 (B) cases arising under the workers' compensation law of this state.

380 (c) (i) (A) To collect contributions, interest, or penalties, or benefit overpayments and  
381 penalties due from employers or claimants located outside Utah, the division may employ  
382 private collectors providing debt collection services outside Utah.

383 (B) Accounts may be placed with private collectors only after the employer or claimant  
384 has been given a final notice that the division intends to place the account with a private  
385 collector for further collection action.

386 (C) The notice shall advise the employer or claimant of the employer's or claimant's  
387 rights under this chapter and the applicable rules of the department.

388 (ii) (A) A private collector may receive as compensation up to 25% of the lesser of the  
389 amount collected or the amount due, plus the costs and fees of any civil action or postjudgment  
390 remedy instituted by the private collector with the approval of the division.

391 (B) The employer or claimant shall be liable to pay the compensation of the collector,  
392 costs, and fees in addition to the original amount due.

393 (iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15  
394 U.S.C. Sec. 1692 et seq.

395 (iv) (A) A civil action may not be maintained by a private collector without specific  
396 prior written approval of the division.

397 (B) When division approval is given for civil action against an employer or claimant,  
398 the division may cooperate with the private collector to the extent necessary to effect the civil  
399 action.

400 (d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution,  
401 interest, penalties or benefit overpayments and penalties, costs due, the name of the employer  
402 or claimant, and the employer's or claimant's address and telephone number when any  
403 collection matter is referred to a private collector under Subsection (3)(c).

404 (ii) A private collector is subject to the confidentiality requirements and penalty  
405 provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent  
406 disclosure is necessary in a civil action to enforce collection of the amounts due.

407 (e) An action taken by the division under this section may not be construed to be an  
408 election to forego other collection procedures by the division.

409 (4) (a) In the event of a distribution of an employer's assets under an order of a court  
410 under the laws of Utah, including a receivership, assignment for benefits of creditors,  
411 adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter  
412 due shall be paid in full prior to all other claims except taxes and claims for wages of not more  
413 than \$400 to each claimant, earned within five months of the commencement of the  
414 proceeding.

415 (b) If an employer commences a proceeding in the Federal Bankruptcy Court under a  
416 chapter of 11 U.S.C. 101 et seq., as amended by the Bankruptcy Abuse Prevention and  
417 Consumer Protection Act of 2005, contributions, interest, and penalties then or thereafter due  
418 shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy  
419 Abuse Prevention and Consumer Protection Act of 2005.

420 (5) (a) In addition and as an alternative to any other remedy provided by this chapter

421 and provided that no appeal or other proceeding for review provided by this chapter is then  
422 pending and the time for taking it has expired, the division may issue a warrant in duplicate,  
423 under its official seal, directed to the sheriff of any county of the state, commanding the sheriff  
424 to levy upon and sell the real and personal property of a delinquent employer or claimant found  
425 within the sheriff's county for the payment of the contributions due, with the added penalties,  
426 interest, or benefit overpayment and penalties, and costs, and to return the warrant to the  
427 division and pay into the fund the money collected by virtue of the warrant by a time to be  
428 specified in the warrant, not more than 60 days from the date of the warrant.

429 (b) (i) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the  
430 duplicate with the clerk of the district court in the sheriff's county.

431 (ii) The clerk shall enter in the judgment docket, in the column for judgment debtors,  
432 the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate  
433 columns the amount of the contribution, penalties, interest, or benefit overpayment and  
434 penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.

435 (c) The amount of the docketed warrant shall:

436 (i) have the force and effect of an execution against all personal property of the  
437 delinquent employer; and

438 (ii) become a lien upon the real property of the delinquent employer or claimant in the  
439 same manner and to the same extent as a judgment duly rendered by a district court and  
440 docketed in the office of the clerk.

441 (d) After docketing, the sheriff shall:

442 (i) proceed in the same manner as is prescribed by law with respect to execution issued  
443 against property upon judgments of a court of record; and

444 (ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be  
445 collected in the same manner.

446 (6) (a) Contributions imposed by this chapter are a lien upon the property of an  
447 employer liable for the contribution required to be collected under this section who shall sell  
448 out the employer's business or stock of goods or shall quit business, if the employer fails to



449 make a final report and payment on the date subsequent to the date of selling or quitting  
450 business on which they are due and payable as prescribed by rule.

451 (b) (i) An employer's successor, successors, or assigns, if any, are required to withhold  
452 sufficient of the purchase money to cover the amount of the contributions and interest or  
453 penalties due and payable until the former owner produces a receipt from the division showing  
454 that they have been paid or a certificate stating that no amount is due.

455 (ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase  
456 money, the purchaser is personally liable for the payment of the amount of the contributions  
457 required to be paid by the former owner, interest and penalties accrued and unpaid by the  
458 former owner, owners, or assignors.

459 (7) (a) If an employer is delinquent in the payment of a contribution, the division may  
460 give notice of the amount of the delinquency by registered mail to all persons having in their  
461 possession or under their control, any credits or other personal property belonging to the  
462 employer, or owing any debts to the employer at the time of the receipt by them of the notice.

463 (b) A person notified under Subsection (7)(a) shall neither transfer nor make any other  
464 disposition of the credits, other personal property, or debts until:

465 (i) the division has consented to a transfer or disposition; or

466 (ii) 20 days after the receipt of the notice.

467 (c) All persons notified under Subsection (7)(a) shall, within five days after receipt of  
468 the notice, advise the division of credits, other personal property, or other debts in their  
469 possession, under their control or owing by them, as the case may be.

470 (8) (a) (i) Each employer shall furnish the division necessary information for the proper  
471 administration of this chapter and shall include wage information for each employee, for each  
472 calendar quarter.

473 (ii) The information shall be furnished at a time, in the form, and to those individuals  
474 as the department may by rule require.

475 (b) (i) Each employer shall furnish each individual worker who is separated that  
476 information as the department may by rule require, and shall furnish within 48 hours of the

477 receipt of a request from the division a report of the earnings of any individual during the  
478 individual's base-period.

479 (ii) The report shall be on a form prescribed by the division and contain all information  
480 prescribed by the division.

481 (c) (i) For each failure by an employer to conform to this Subsection (8) the division  
482 shall, unless good cause is shown, assess a \$50 penalty if the filing was not more than 15 days  
483 late.

484 (ii) If the filing is more than 15 days late, the division shall assess an additional penalty  
485 of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250  
486 per filing.

487 (iii) The penalty is to be collected in the same manner as contributions due under this  
488 chapter.

489 (d) (i) The division shall prescribe rules providing standards for determining which  
490 contribution reports shall be filed on magnetic or electronic media or in other machine-readable  
491 form.

492 (ii) In prescribing these rules, the division:

493 (A) may not require an employer to file contribution reports on magnetic or electronic  
494 media unless the employer is required to file wage data on at least 250 employees during any  
495 calendar quarter or is an authorized employer representative who files quarterly tax reports on  
496 behalf of 100 or more employers during any calendar quarter;

497 (B) shall take into account, among other relevant factors, the ability of the employer to  
498 comply at reasonable cost with the requirements of the rules; and

499 (C) may require an employer to post a bond for failure to comply with the rules  
500 required by this Subsection (8)(d).

501 (9) (a) (i) An employer liable for payments in lieu of contributions shall file  
502 Reimbursable Employment and Wage Reports.

503 (ii) The reports are due on the last day of the month that follows the end of each  
504 calendar quarter unless the division, after giving notice, changes the due date.

505 (iii) A report postmarked on or before the due date is considered timely.

506 (b) (i) Unless the employer can show good cause, the division shall assess a \$50  
507 penalty against an employer who does not file Reimbursable Employment and Wage Reports  
508 within the time limits set out in Subsection (9)(a) if the filing was not more than 15 days late.

509 (ii) If the filing is more than 15 days late, the division shall assess an additional penalty  
510 of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250  
511 per filing.

512 (iii) The division shall assess and collect the penalties referred to in this Subsection  
513 (9)(b) in the same manner as prescribed in Sections 35A-4-309 and 35A-4-311.

514 (10) If a person liable to pay a contribution or benefit overpayment imposed by this  
515 chapter neglects or refuses to pay it after demand, the amount, including any interest, additional  
516 amount, addition to contributions, or assessable penalty, together with any additional accruable  
517 costs, shall be a lien in favor of the division upon all property and rights to property, whether  
518 real or personal belonging to the person.

519 (11) (a) The lien imposed by Subsection (10) arises at the time the assessment, as  
520 defined in the department rules, is made and continues until the liability for the amount  
521 assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

522 (b) (i) The lien imposed by Subsection (10) is not valid as against a purchaser, holder  
523 of a security interest, mechanics' lien holder, or judgment lien creditor until the division files a  
524 warrant with the clerk of the district court.

525 (ii) For the purposes of this Subsection (11)(b):

526 (A) "Judgment lien creditor" means a person who obtains a valid judgment of a court  
527 of record for recovery of specific property or a sum certain of money, and who in the case of a  
528 recovery of money, has a perfected lien under the judgment on the property involved. A  
529 judgment lien does not include inchoate liens such as attachment or garnishment liens until  
530 they ripen into a judgment. A judgment lien does not include the determination or assessment  
531 of a quasi-judicial authority, such as a state or federal taxing authority.

532 (B) "Mechanics' lien holder" means any person who has a lien on real property, or on

533 the proceeds of a contract relating to real property, for services, labor, or materials furnished in  
534 connection with the construction or improvement of the property. A person has a lien on the  
535 earliest date the lien becomes valid against subsequent purchasers without actual notice, but not  
536 before the person begins to furnish the services, labor, or materials.

537 (C) "Person" means:

538 (I) an individual;

539 (II) a trust;

540 (III) an estate;

541 (IV) a partnership;

542 (V) an association;

543 (VI) a company;

544 (VII) a limited liability company;

545 (VIII) a limited liability partnership; or

546 (IX) a corporation.

547 (D) "Purchaser" means a person who, for adequate and full consideration in money or  
548 money's worth, acquires an interest, other than a lien or security interest, in property which is  
549 valid under state law against subsequent purchasers without actual notice.

550 (E) "Security interest" means any interest in property acquired by contract for the  
551 purpose of securing payment or performance of an obligation or indemnifying against loss or  
552 liability. A security interest exists at any time:

553 (I) the property is in existence and the interest has become protected under the law  
554 against a subsequent judgment lien arising out of an unsecured obligation; and

555 (II) to the extent that, at that time, the holder has parted with money or money's worth.

556 (12) (a) Except in cases involving a violation of unemployment compensation  
557 provisions under Section 76-8-1301, Subsection 35A-4-304(5), or Subsection 35A-4-405(5),  
558 and at the discretion of the division, the division may accept an offer in compromise from an  
559 employer or claimant to reduce past due debt arising from contributions or benefit  
560 overpayments imposed under this chapter.

561           (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
562 division shall make rules for allowing an offer in compromise provided under Subsection  
563 (12)(a).

564           Section 4. **Effective date.**

565           If approved by two-thirds of all the members elected to each house, this bill takes effect  
566 upon approval by the governor, or the day following the constitutional time limit of Utah  
567 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
568 the date of veto override.